

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

August 8, 1985

John Glenn, Director
Bay Area Rapid Transit District
P.O. Box 12688
Oakland, CA 95604-2688

Re: Your Request for Advice
Our File No. A-85-169

Dear Mr. Glenn:

Your letter requests advice relative to the following facts:

FACTS

... I am an elected member of the B.A.R.T. Board of Directors. I also own a Claim Adjustment and Administrative business. As a result of being low bidder and my expertise in mass transit claims, I have handled all auto Claims made against the San Mateo County Transit District (SMCTD) since that District was first created. It was created before I became a member of the BART Board of Directors.

SMCTD is negotiating with BART to ascertain if they can pay for the building of a BART station at Colma in San Mateo plus pay enough additional funds to provide local funding for 3 one station extensions in Alameda and Contra Costa County. This is not money which BART is paying but is money SMCTD would be paying BART. San Mateo County would not have any voice as to the operation to the Colma Station nor would they have a representative on the BART Board.

CONCLUSION

You must disqualify yourself from participation in the negotiations and ratification of the agreement with SMCTD, a source of income to you.

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ANALYSIS

The Political Reform Act (the "Act")^{1/} requires that public officials refrain from making, participating in making or using their official positions to influence any governmental decision in which they have a financial interest. Section 87100. In addition to matters which directly affect their own pocketbooks, officials are also required to disqualify themselves with respect to any decision which will have a reasonably foreseeable material financial effect upon certain enumerated economic interests. Section 87103. Among those enumerated interests is any source of income of \$250 or more during the preceding 12-month period. Section 87103(c). SMCTD is a client of yours and, presumably, is a source of payments to you of \$250 or more during the past 12-months.^{2/}

Although Section 82030(b) excludes from the definition of income "... salary and reimbursement for expenses or per diem received from a state, local, or federal government agency ...," that exclusion does not cover SMCTD's payments to you for your private services as a claims adjustor.^{3/} Consequently, the payments which you receive for your claims adjusting work are "income" within the meaning of Section 82030(a). Thus, SMCTD is a source of income to you, despite the fact that it, too, is a governmental entity. As a result, disqualification will be required as to any decision of the BART Board of Directors which will have a reasonably foreseeable material financial effect upon SMCTD which is distinguishable from the decision's effect upon the public generally. The "public" for BART is the residents, businesses, etc., within the District. This does not include San Mateo County and consequently SMCTD could not

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

^{2/} Your Statement of Economic Interests indicates that you are the "Owner and General Manager" of your adjusting business. We assume that you are a 100% owner. In that case, all income to your claims adjustment business is treated as income to you. Section 82030(a).

^{3/} We assume that your work for SMCTD is the performance of a specific, contractual task and does not result in your becoming a "consultant" within the meaning of regulation 2 Cal. Adm. Code Section 18700. (Copy enclosed.)

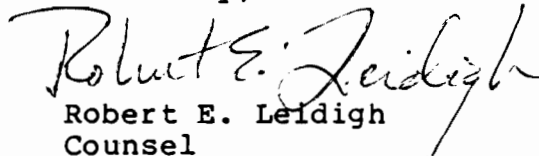
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constitute even a "significant segment" of the general public for purposes of a BART Board of Directors decision.

The Commission has not adopted specific monetary guidelines for measuring the materiality of financial effects upon nonprofit entities or government entities. However, under 2 Cal. Adm. Code Section 18702(a) and 18702(b) (3) (D), the effect will be material if it is "significant." In this case, the issue is whether and how much SMCTD will pay to BART. This is being negotiated and, presumably, the dollars involved are "significant." In addition, under the Commission's newly adopted regulation, 2 Cal. Adm. Code Section 18702.1 (copy enclosed) disqualification would be required under subsection (a) (1), since SMCTD would be "appearing" before the BART Board as a party to the agreement.

If you have any questions, please do not hesitate to contact me. I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division .

REL:plh
Enclosure



BAY AREA RAPID TRANSIT DISTRICT
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July 29, 1985

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FAIR POLITICAL PRACTICES COMMISSION
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Sacramento, Ca 95814

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8TH DISTRICT

JOHN H. KIRKWOOD
9TH DISTRICT

Dear Sirs:

This letter is to request an opinion relative to conflict of interest. I am an elected member of the B.A.R.T. Board of Directors. I also own a Claim Adjustment and Administrative business. As a result of being low bidder and my expertise in mass transit claims, I have handled all auto Claims made against the San Mateo County Transit District (SMCTD) since that District was first created. It was created before I became a member of the BART Board of Directors.

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I do not feel that there is any way I could personally benefit by SMCTD paying money to BART. I do believe that the BART District which I represent would benefit by SCMTD paying the local matching funds to build a one station extension in Fremont which is my District. I strongly support it and would like to vote for it.

Please advise if you feel there is a conflict of interest on my part if I should vote on it. I have discussed it with two attorneys and one felt that I would have no conflict and the other was not sure.

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Your prompt attention will be appreciated. Please respond to my office, John Glenn, 337 17th St., Suite 202, Oakland, Ca 94612.

Very truly yours,

John Glenn
6th District Director

JG:jw